



<u>Decision Ref:</u>	2018-0164
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Foreign Exchange
<u>Conduct(s) complained of:</u>	Maladministration Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Rates of exchange supplied
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is unhappy that the Provider intermittently suspended the currency exchange platform (or marketplace) during the morning of 24th June 2016, preventing him from achieving the price he wished to achieve on his exchange, and that the available exchange rates on the Provider's marketplace at the market lowpoint did not reflect the actual market rates at the time. In addition, the Complainant is unhappy that his outgoing transfer was held, and with the way his query in relation to the processing of his transfer was dealt with.

The complaint is that the Provider has not acted correctly or reasonably in relation to his currency exchange attempts and in relation to the transfer on his account.

The Complainant's Case

The Complainant's complaint is that on the evening of 23rd June 2016 having already previously deposited \$250,000.00 with the Provider to exchange into pounds and anticipating a big fluctuation in the currency exchange market that evening he subsequently sat up all night watching the money markets and hoping to get the best possible rate in the market that evening. The Complainant states however that the Provider kept suspending its trading platform and that in addition the platform was not reflecting the actual price in the

Market which dropped as low as 1.3 dollars to the pound and further even when its system was active it never reflected this rate until 6am on 24th June.

The Complainant states that he gave up and when he logged in later that day the rate was back up to 1.38, which he says he reluctantly exchanged at as he was not expecting the market to go back down again. He states that as he was never able to get the true market rate from this Provider earlier that day he effectively lost over £9,000.00 in the exchange rate.

The Complainant's position is that following this on 28th June 2016 he called the Provider's office as his money was still not in his UK account and eventually got through to an agent who, he states, after listening to his complaint hung up the phone on him. The Complainant says that he then called back and again waited for a long time to get through and he spoke to someone called A****, who assured him he would contact the bank and e-mail him immediately to inform him where the funds were. The Complainant states that three hours went by and he had heard nothing, so once again he spent a long time trying to get through to the Provider only to be told by the same person who hung up on him the first time that the Provider had no means of calling the bank and that A**** had e-mailed the Bank and the Complainant would just have to wait until the Provider had an email back from the bank.

The Complainant says that another hour went by and still nothing happened, so once again he called back and asked to speak to a manager. The Complainant states that he eventually got through to someone called O*** who told him his money was held up by a third party despite the fact it had all the evidence needed to show the money came from a house sale in the US and that he would email him to say when the money would be released to his account and also provide him with the names and contact details of the Provider's senior staff for him to contact about the matter. The Complainant's position is that this never happened.

The Complainant submits that then he found the email address for the CEO and emailed his complaint as detailed above only to get a response from a Mr. TP who basically kept apologising for all the lies told about not being able to talk to the Provider's bank etc. but failed to actually listen to all his calls and made excuses about the Provider's system being suspended, but failed to address the fact the Provider never actually reflected the real price in the market. The Complainant says that the representative then took three days to email him a letter which did not deal with the real issues of the Provider's staff lying to him and the fact the Provider never offered the actual rates in the market place.

The Complainant states that because he was unable to exchange his money at the 1.32 rate that was available in the market and that he could have easily got at another company that he uses regularly, the Provider company cost him over £9000.00 as he could have exchanged his \$250,000.00 at 1.32 which would have been £189,393.93 instead he got just over 1.38 so only got £180,393.00

It is the Complainant's position that the Provider has not only consistently lied to him but it never reflected the true market price of the £ during a very momentous time and he argues

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that it was clearly doing this for its own gain and clearly only addressed the issues that suited itself and not the real issues of lies and deceit.

The Provider's Case

In relation to the marketplace suspension and the Complainant's currency exchange, it is the Provider's position that due to significant volatility in the foreign exchange markets surrounding Brexit (23 to 24-June - 2016), in the interests of protecting its customers from such volatile movements, it opted at various times during the day — at points of very extreme market movement — to temporarily suspend the marketplace. Over a twelve hour period, the marketplace was suspended thirteen times, for a combined total of sixty-four minutes, meaning the marketplace was fully accessible to all customers for 92% of this period. These marketplace suspension times varied from one minute to fifteen minutes, each time being reinstated once an acceptable level of market stability returned.

The Provider refers to Section 10.3 of the Provider's Terms and Conditions which stipulates:

"[The Provider] reserves the right to suspend the marketplace at any time and for any length of time. While the marketplace is suspended, you will not be able to place orders but you will be able to cancel open orders. During suspension [the Provider] will not cancel any open orders".

In addition, Section 10.4 states:

"[The Provider] is not liable to you for any loss, damage, claim or compensation (including loss of profit or loss of use) incurred by you from your inability to use the website or the products and services offered through or by the website during the periods in which the marketplace is closed or suspended".

It is the Provider's position that the Complainant had ample opportunity to make his exchange from the moment his deposit was cleared to his Provider account on 15-June-2016. It states that the Complainant placed an exchange order that same day. He proceeded to amend this order on 22-June-2016 to a price more favourable to him, as well as on a further four occasions throughout the day of 24-June-2016. The Provider submits that the pattern of his actions infer that he was attempting to "pick the bottom of the market" by achieving a better price that was available at the times of amendment. The Provider states that, unfortunately for the Complainant, the market did not reach the price level he was hoping to achieve.

The Provider says that at any point in time during this period, the Provider's marketplace rates were in alignment with the interbank rates.

In relation to the Complainant's instructed transfer out, the Provider states that the Complainant instructed his transfer out of GBP 180,433.15 on Friday 24-June-2016 at 14:39. The Provider submits that as per its transaction monitoring procedure, the transfer was held, and an automated email was sent to the Complainant requesting additional supporting information / documentation in order to complete processing of the transfer. The Provider

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says that it did not receive a response to this email, meaning the transfer remained held over the weekend. The Provider states that as per standard control practice, an internal report generated at 16:00 on Monday 27-June-2016 highlighted the transaction as being in unprocessed status. The Provider submits that a review of the transfer was completed and it was determined that the documents and information required to process the Complainant's incoming USD deposit were sufficient to complete processing of his GBP transfer out. The Provider says that the transfer was thus released at 16:44 on the same day, and instructed to the Provider's banking partner at 17:00 on the same day.

The Provider position is that later that same evening (at 18:12), it received a request from its banking partner, seeking additional information in relation to the transfer. The Provider states that this requested information was provided to its banking partner the following morning (Tuesday 28-June-2016 at 09:58). The Provider says that at 10:25 on the same day, its banking partner confirmed the payment had been released for processing, and was subsequently processed at 14:19 on the same day.

The Provider states that it acknowledges that the Complainant had provided it with sufficient documentation relating to the entire transaction on 15-June-2016. However, as a deposits and transfers are processed as separate transactions, there may be instances where a transaction is held and/or queries by the banking partners for additional compliance checks separately at deposit and transfer stages, which is what the Complainant experienced. The Provider states that had the Complainant responded to the email sent to him when he instructed the transfer, the Transaction Monitoring would have identified sooner that the information given at the time of deposit was sufficient to release the transfer. The Provider says it acknowledge that as a result of this, the Complainant's outgoing GBP transfer was received into his account one day later than the normal processing times. The Provider submits that it should be noted that transactions are frequently subject to this type of review by its banking partners in accordance with normal industry practice in order to prevent money laundering and terrorist financing.

In relation to the Complainant's contact with the Provider's Customer Service, the Provider submits that the Complainant contacted its Customer Service via telephone on five occasions on 28-June-2016. Recordings of these calls include evidence of attempted callbacks, and show that the calls were dropped rather than terminated by a member of the Provider's staff, as suggested by the Complainant.

The Provider's position is that at no time during any of his interactions with it, was the Complainant lied to (as was also suggested by the Complainant), or misled. The Provider says that the inability to provide the Complainant with up-to-the-minute information as to the exact progress of his transfer is simply attributable to the absence of real-time systems communication between its systems and its banking partner's systems.

The Provider explains that the agreed communication medium between it and the banking partner involved in processing the Complainant's transfer is via email, to provide a robust audit trail. The Provider says that although the Complainant's transfer was processed by its banking partner on 28-June-2016 at 14:19, due to there being no real-time link between its banking partner's systems and its own, it had not yet received confirmation that the

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Complainant's transfer had been processed. As such, the Provider's Customer Service was unable to confirm to the Complainant at the time of his calling the successful processing of his transfer, and thus had to treat the matter as ongoing.

The Provider states that it acknowledges that although the Complainant was not provided with names of "senior staff" to whom he could escalate the matter (which he requested during one of his telephone calls), the matter was escalated to the Head of Customer Service (Mr. P) as per complaint escalation protocol. Mr. P subsequently contacted the Complainant on 04-July-2016 in an effort to resolve the issue.

In relation to the Provider's Rates and Fees, the Provider states that as clearly set on its website, the Provider is a marketplace, so the exchange rates are set by its users. The Provider says that it charges 0.15% of the total amount exchanged when customers match each other. In the event that there are no customers providing a competitive rate for an exchange, the Provider steps in, this results in a charge of 0.4% to 0.6% of the amount exchanged. The Provider says that depending on which way customers are exchanging, and the activity on the marketplace at that time, customers will pay anywhere from nothing (0%) to 0.6%. plus a fixed €3 transfer fee (GBP2.50). The Provider states that on average, customers at the moment pay around 0.38%.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 31st October 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The issue for investigation and adjudication is whether the Provider has acted correctly or reasonably in relation to the Complainant's currency exchange attempts and in relation to the transfer on his account.

Analysis

In relation to the Complainant's difficulty with his currency exchange attempts on the evening of 23rd June 2016 through to the morning of the 24th June 2016, I accept that the Provider has correctly explained what had occurred, and that the actions it took in suspending the marketplace were allowed for under the agreement that it had in place with the Complainant. I also accept that the Provider would not be liable for any losses that the Complainant experienced by not being able to make his exchanges during the suspension periods. In the above regard the following Terms and Conditions are noted:

Section 10.3 of the Terms and Conditions stipulates:

"[The Provider] reserves the right to suspend the marketplace at any time and for any length of time. While the marketplace is suspended, you will not be able to place orders but you will be able to cancel open orders. During suspension [the Provider] will not cancel any open orders".

Section 10.4 of the Terms and Conditions state:

"[The Provider] is not liable to you for any loss, damage, claim or compensation (including loss of profit or loss of use) incurred by you from your inability to use the website or the products and services offered through or by the website during the periods in which the marketplace is closed or suspended".

In relation to the Complainant's instruction to transfer out his monies, the following is noted:

The Complainant instructed the transfer of £180k+ on Friday 24/06/2016 which did not credit to his account until Tuesday 28th June 2016.

The delay resulted from the Provider not having a process in place to recognise that all supporting information was available for the transfer. Here the Provider's banking partner had requested this supporting information for clearance purposes on the Friday. The Provider had the relevant information, but requested same again from the Complainant by way of an e-mail. When this e-mail was not responded to by the Complainant, the transfer was not released to the Bank until Monday 27th June 2016. The Bank requested further information from the Provider and the monies were then released on the morning of 28th June 2016.

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The Provider accepts that it did not keep the Complainant update as to the progress of his transfer.

When the Complainant contacted the Provider on 28th June 2016 he experienced difficulties getting an explanation as to what was happening to his substantial transfer. For example the Complainant was put on hold on a number of occasions, a call was terminated without any apparent reason, a promised call back / follow up with e-mail had not occurred, and for the most part the concerns that the Complainant had, did not seem to be appreciated by those he spoke to.

The Provider has apologised and has put its lapses in service into some context, that is, given the unprecedented level of transactions and volumes of signups that were occurring at the time (Brexit Referendum was held in UK at this time).

Overall I consider that if the Provider had more robust procedures in place for checking that transfer requests were in order before passing same on to their bank, and in relation to its contact service with the bank, this complaint would not have arisen. The Provider submits that it now has in place a system that would have realised that documentation was provided for the deposit and such transfers would now be “pre-approved”. In relation to the Provider’s contact arrangements with the bank, I consider that a telephone call directly to the bank early on 28th June 2016, would have elicited enough information for the Provider to communicate how the transfer was progressing and avoid the stress and inconvenience that was caused to the Complainant when he was justifiably concerned that his substantial transfer had not occurred.

To conclude, I accept that the Provider acted within its rights when suspending the trades on the marketplace. However, I consider that the Complainant was entitled to a better service from the Provider with his requested transfer on Friday, 24th June 2016 and in his subsequent enquiries about what had occurred with same. Therefore, it is my Legally Binding Decision that the complaint is partially upheld and in order to do justice between the parties, I direct the Provider to make a compensatory payment of Stg£2,500 (two thousand and five hundred pounds sterling) to the Complainant.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of Stg£2,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

23rd November 2018

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.